

ST 02-0030-PLR 12/17/2002 AUTOMOBILE RENTING TAX

Extensions or renewals of automobile leases that have initial terms of more than one year are not subject to Automobile Renting Occupation and Use Tax liability if the initial lease term is for a period greater than one year. 86 Ill. Adm. Code 180.101. (This is a PLR).

December 17, 2002

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200/>), is in response to your letters of May 21, 2002, August 29, 2002, and various telephone conversations with our office. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to AAA and TRUST for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither AAA and TRUST nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your May 21, 2002 letter, you have stated and made inquiry as follows:

Please view this letter as a private letter ruling request as to the application of the AROT/ARUT and Illinois Retailer's Occupation Tax and Use Tax ('ROT/UT') to automobiles purchased by AAA and the TRUST for purposes of leasing such vehicles for a period of more than one year. This is a follow-up private letter ruling request to the general information letter (GIL) issued by the Department of Revenue ('DOR') on May 3, 2002.

FACTS

We represent AAA., a company principally engaged in the business of leasing automobiles (the 'company'). The vehicles are purchased by the company, as the servicing agent for a trust called TRUST. This trust holds the titles to all of the company's vehicles. The vehicles are purchased from dealerships which are located in Illinois (the 'Illinois Dealerships') and dealerships that are located outside of Illinois (the 'Out-of-State Dealerships'). The Illinois Dealerships withdraw funds from the company's bank account for the factory invoice price of the respective vehicle. The company then registers the vehicles in the name of the trust. The company holds the beneficial interest in the trust. This structure allows ease in borrowing from the company's lenders. (For purposes of this letter, the 'trust' and the 'company' shall be together referred to as the 'Leasing Company.')

In a transaction in which a Leasing Company's vehicle is purchased from an Illinois Dealership, the purchase is reported on Illinois' Sales Tax Transaction Return (Form

ST-556). If the vehicle purchased from an Illinois Dealership is not a replacement vehicle for a vehicle that is completely destroyed, the Leasing Company, pursuant to a contractual arrangement with each Illinois Dealership, completes Form ST-556. The completed Form ST-556 references the Illinois Dealership as the seller, including its Illinois Business Tax Number, and the trust as the purchaser. The Leasing Company then remits the ROT due on each vehicle under this scenario directly to the DOR. If the vehicle purchased from an Illinois Dealership is a replacement vehicle for a vehicle that is completely destroyed, each Illinois Dealership completes Form ST-556 and remits the ROT due on each such vehicle directly to the DOR. The Leasing Company, under this scenario, remits any UT due on the purchase price of the replacement vehicle to the Illinois Dealership.

In a transaction in which a Leasing Company's vehicle is purchased from an Out-of-State Dealership, the purchase is reported on an Illinois Use Tax Transaction Return (Form RUT-25). The Leasing Company completes RUT-25, referencing the trust as the purchaser and naming the Out-of-State Dealership as the seller. The Leasing Company remits the UT due on each vehicle under this scenario directly to the DOR. In all of these transactions, the trust holds title to the vehicles.

Following their purchase, the vehicles are leased to customers by the Leasing Company pursuant to the Vehicle Lease Agreement, Trac Lease (C) (U.S.A.) (the 'Lease') (copy attached as Exhibit A). The Lease is an open-ended true lease for a minimum term of 367 days and a maximum term of 66 months.¹ The language relating to the term of the Lease is addressed in the Lease as follows:

'3. LEASE TERM. The noncancelable minimum Lease Term for each vehicle is 367 days beginning upon the date that Lessee takes delivery of the vehicle, or as specified in paragraph 1 herein. Thereafter, the Lease Term may be renewed, in accordance with the amortization schedule set for the vehicle in the Vehicle Order Form, for the full term of anticipated use.² After the expiration of the Minimum Vehicle Lease Term, Lessee may terminate the Vehicle Lease, upon thirty days prior written notice to Lessor. Lessee may terminate the Lease of a vehicle prior to the expiration of any lease term, including the Minimum Lease Term, if the vehicle suffered a 'Total Casualty,' which is defined herein as any Vehicle which is lost, stolen or destroyed, or shall be in such condition as does not warrant repair or further maintenance (subject to Lessor's agreement as to such condition). Lessee shall promptly notify Lessor of such event and hold the vehicle, or wreckage thereof, for disposal by Lessor, and such vehicle shall be deemed surrendered by Lessee to Lessor as of the date of Lessor's receipt of such notice.'³

Pursuant to the terms of the Lease, 'the lessee shall pay all use, excise, personal property, sales, gross receipts, and other taxes, and all government assessments, fees, and charges payable during the term of the lease of each Vehicle.' As a result, the Leasing Company is reimbursed by the lessees for any ROT or UT that the Leasing Company pays upon the purchase of any vehicles.

OPINION REQUESTED

The Leasing Company's purchases of vehicles for subsequent lease to customers pursuant to the Lease are subject to the ROT and/or the UT, and such Leases are not subject to the AROT or ARUT for the term of the Lease. In that regard, we also ask that the DOR acknowledge that our conclusions stated at the end of this letter are correct.

STATEMENT

This is a request for a private letter ruling (PLR) under 2 Ill. Admin. Code Sec. 1200.110. No audit or litigation is currently pending between the Leasing Company and the DOR. To the best of our knowledge, the DOR has not previously ruled on the same or similar issue for the Leasing Company or a predecessor (except for the GIL dated May 3, 2002), nor has the Leasing Company submitted the same or similar issue to the DOR prior to withdrawing it before a letter ruling was issued. Both AAA and TRUST are located at ADDRESS. A power of attorney for these entities is attached as Exhibit B.

LAW

Illinois imposes the ROT on persons selling tangible personal property at retail. 35 ILCS 120/2. A 'sale at retail' is defined as the transfer for consideration, and not for resale, of title to or ownership of tangible personal property to a purchaser. 35 ILCS 120/1. For purposes of the ROT, a purchaser is anyone who, through a sale at retail, acquires for consideration title to or ownership of tangible personal property. 35 ILCS 120/1. A retailer is required to remit the ROT to the DOR.

Illinois also imposes UT on the privilege of using in Illinois tangible personal property purchased anywhere at retail from a retailer. 35 ILCS 105/3. The UT is either collected from the purchaser of the tangible personal property by a retailer maintaining a place of business in Illinois or paid directly to the DOR by any person using the property within Illinois. 35 ILCS 105/3-45.

The ROT and UT are related in that the retailers remit the ROT, based on the gross receipts of their sales at retail of tangible personal property, to the DOR and collect the UT, based on the purchase of such tangible personal property, from the purchaser. The UT collected by the retailer is not remitted to the DOR; the UT is a reimbursement of the ROT paid by the retailer to the DOR. ST 00-0281-GIL, December 7, 2000.

In Illinois, lessors of tangible personal property under a true lease are considered to be the end users of the property to be leased. 86 Ill. Admin. Code Section 130.2010(b). As a result, lessors incur UT on the lessor's cost price of the property (except that the purchase of automobiles leased for terms of one year or less which are subject to the AROT/ ARUT are exempt from the UT). The lessors either pay their suppliers, if their suppliers are registered to collect UT, or self-assess and remit the tax directly to the DOR. 35 ILCS 105/3-45. Since the lessors are considered the end users of the property and therefore incur UT, no ROT is imposed upon the rental receipts and the lessees incur no UT liability for the rental charges. 86 Ill. Admin. Code Section 150.305(3).

Leases of automobiles for a duration of one year or less are subject to taxation under the AROT. 86 Ill. Admin. Code Section 180.101(a). Therefore, 'so long as the lease term for each automobile never binds the lessee for a period longer than one year,' the lease is subject to the AROT and not the ROT or UT. ST 92-0172-PLR (March 27, 1992).

ANALYSIS

Under the facts, the Illinois Dealerships are selling the vehicles to the Leasing Company at retail. Therefore, the Illinois Dealerships are subject to the ROT based on the gross receipts that they receive on the sale of such vehicles. The Leasing Company is purchasing the vehicles for the purpose of leasing the vehicles under a lease for a term greater than one year. Since the Lease is a true lease, the Leasing Company is considered the end user of the vehicles purchased by it from the Illinois Dealerships and the Out-of-State Dealerships.

Under this scenario, the Illinois Dealerships are required to remit the ROT directly to the DOR, based on the gross receipts that they receive on the sale of the vehicles to the Leasing Company. The Illinois Dealerships can be reimbursed for the ROT remitted to the DOR by collecting the corresponding UT from the Leasing Company. In this regard the Leasing Company and each Illinois Dealership have mutually agreed, pursuant to a contractual arrangement, that where a vehicle is purchased, other than as a replacement vehicle for a vehicle that is completely destroyed, that the Leasing Company will remit the ROT directly to the DOR on behalf of the respective Illinois Dealership. If a vehicle is purchased from an Illinois Dealership as a replacement vehicle for a vehicle that is completely destroyed, the Leasing Company will remit to the Illinois Dealership the UT due on the purchase of the vehicle from the respective Illinois Dealership. If a vehicle is purchased from an Out-of-State Dealership, the Leasing Company remits the UT, based on the purchase price of the vehicle, directly to the DOR.

In addition, since the Lease is a true lease, the lessees are not purchasing the vehicles from the Leasing Company at retail. Thus, the Leasing Company is not subject to the ROT on the rental receipts received from the lessees. Moreover, notwithstanding any contractual liability to reimburse the Leasing Company for any ROT or UT, the lessees under the Lease are not subject to the UT because, for purposes of these taxes, the lessees are not consumers or end users of tangible personal property in Illinois.

As to the AROT/ARUT, since the Leasing Company purchased the automobile for lease and the lease agreement 'binds' the parties to a lease term of greater than one year, no AROT/ARUT would be due. The fact that the maximum lease period is open ended only means that the final lease term can vary anywhere from 367 days to 66-months. However, because the Lease Agreement entered into by the parties 'binds' the lessor to 66 months and 'binds' the lessee to at least 367 days up to 66 months, the Lease fulfills the requirement that it 'binds' the parties to a minimum period that exceeds one year. See ST 92-0172. As a result, such a lease does not transfer the possession or *right to possession* of an automobile 'for a period of one year or less.' 35 ILCS 155/2. Rather, possession or the *right to possession* has been transferred from anywhere from 367 days to 66 months under the Lease and, thus, always exceeds one year.⁴

CONTRARY AUTHORITY AND DISCUSSION

No authority exists that is contrary to the positions expressed in this request for a private letter ruling.

CONCLUSIONS

We respectfully request that the DOR issue a private letter ruling (PLR) addressing the issues presented above and reaching the following conclusions:

- That each Illinois Dealership is subject to ROT and satisfies its ROT obligations when either: (i) the Illinois Dealership prepares Form ST-556 and timely remits the correct amount of ROT directly to the DOR; (ii) the Leasing Company, pursuant to a contractual arrangement with each Illinois Dealership, prepares Form ST-556 on behalf of the Illinois Dealership and timely remits the correct amount of ROT owed by the Illinois Dealership directly to the DOR **(while we understand that the Dealership cannot contractually shift its tax obligation to another entity for DOR purposes, we are merely asking whether the Dealership's ROT obligation is satisfied if the Leasing Company on behalf of the Dealership timely files the returns and pays the ROT to the DOR).**
- That the automobiles purchased by the Leasing Company are subject to UT and that UT obligation is satisfied when either: (i) the Leasing Company, pursuant to a contractual arrangement with each Illinois Dealership, prepares Form ST-556 on behalf of the Illinois Dealership and timely remits the ROT owed by the Illinois Dealership directly to the DOR (thus also effectively paying the UT due on the purchase of the vehicle); or (ii) the Leasing Company prepares Form UT-25 and timely remits the UT due directly to the DOR.
- That the lessees under the Lease are not subject to ROT or UT.
- That the Leasing Company and lessees are not subject to AROT/ARUT at the time that the Lease is executed and during the entire Lease period under the Lease since the Lease has a 'binding' term of greater than one year.

If you have any questions, or contemplate issuing a ruling different than that requested above, please call.

In your August 29, 2002 letter, you have stated as follows:

This letter provides follow-up information concerning the PLR request made by AAA for its long-term, open-ended leases of motor vehicles. In our telephone conversations, it was discussed whether the terminal rental adjustment clause ('TRAC') of the lease agreement could somehow convert the lease agreement into an installment sale. The information and legal authorities stated herein are presented to clearly demonstrate that under federal law, Illinois law, generally accepted accounting principles, administrative consideration, and even the Streamline Sales Tax Agreement, the existence of a TRAC provision does not and should not transform a motor vehicle lease into an installment sale.

The facts are rather straightforward. AAA enters into long-term motor vehicle leases with its lessees. The lease agreements have all of the characteristics of a lease and do not contain: (1) options to purchase by the lessee (bargain or otherwise), or (ii) the transfer of title to the leased vehicle to the lessee at the end of the lease term. However, a TRAC provision is inserted in the lease to allow for the sale of the vehicle by AAA to

third parties at the end of the lease term if the lessee does not renew the lease. Unlike an optional purchase provision in a lease where the lessee can purchase the property, with a TRAC provision the lessee is never allowed to make such a purchase, rendering this type of provision somewhat unique to motor vehicle leases.

Relevant Law and Discussion Federal Law

Federal Law

Under Internal Revenue Code ('IRC') Section 7701(h), the presence of a TRAC provision in a lease agreement will not transform that agreement into an installment sale for federal tax purposes. *Peaden v. Commissioner*, 113 T.C. 116 (1999). This section (in its original form) was added to the IRC in 1984 as part of the Deficit Reduction Act of 1984. 113 T.C. at 123. It was in response to *Swift Dodge v. Commissioner*, 692 F.2d 651 (9th Cir.1982), in which the court concluded that for purposes of federal tax law a TRAC provision could transform a lease agreement into an installment sales agreement, notwithstanding the intent of the parties. 692 F.2d at 654.

As a result of Congress's action in passing Section 7701(h), *Swift Dodge* is no longer good law as it relates to TRAC provisions in leases, and this case cannot be relied upon to set aside the intent of the parties because of the existence of a TRAC provision. *Peaden*, 113 T.C. at 123-24. Therefore, for federal tax law purposes, if the other terms of a lease agreement and intent of the parties demonstrates that a lease was intended, the presence of a TRAC provision cannot be used by the courts to find otherwise. IRC §7701(h)(1).

Illinois Law

The Illinois Retailers Occupation Tax ('ROT') and Use Tax impose a tax on the sale and use of tangible personal property, including motor vehicles, sold at retail by a retailer. 35 ILCS 105/1, *et seq.*, and 120/1, *et seq.* Leases, however, are not subject to these taxes. *Id.*

Whether a transaction is to be considered a 'sale' depends upon a number of factors, including the interaction and application of Illinois (non-tax) law. *E.g.*, *Collinson Stone Co. v. Dept of Rev.*, 48 Ill. 2d 468, 471 (1971) (looked to the Uniform Sales Act for guidance on when passage of title occurred for ROT purposes); *O'Brien v. Isaacs*, 32 Ill. 2d 105 (1965) (applied title-passing test of U.C.C. to determine if sale occurred for ROT purposes). In this regard, the ROT and Use Tax specifically refer to the Illinois Vehicle Code for guidance on the taxability of transfers of motor vehicles. See 35 ILCS 105/1a, 105/3-5(10), 105/3-5(11), 105/3-5(14), 105/3-5(16), 105/3-5(27), 105/3-7; 105/3-10; 105/3-55(h), 105/3-61; 35 ILCS 120/1c, 120/2-5(2), 120/2-5(5), 120/2-5(19), 120/2-5(21), 120/2-5(25), 120/2-5(33), 120/2-7, 120/2-51.

Likewise, the ROT and Use Tax treats motor vehicles defined in the Illinois Vehicle Code differently for tax payment and credit purposes. 35 ILCS 105/9, 105/10; 35 ILCS 120/3, 120/6. The Illinois Vehicle Code also works in tandem with the ROT and Use Tax to enforce the payment of the ROT and Use Tax upon the sale or 'titling' of such vehicles with the state. 625 ILCS 5/3-104. Significantly, two taxes interrelated with the ROT and Use Tax--the Vehicle Use Tax and Replacement Vehicle Tax--which are both

enforced by the Department of Revenue, are contained within the Illinois Vehicle Code. 35 ILCS 5/3-1001 *et seq.* and 5/3-2001 *et seq.*

It is clear that the Illinois Vehicle Code plays a major role in the application, interpretation and enforcement of the ROT and Use Tax with respect to motor vehicle sales. Similarly, it is also clear that Illinois courts have routinely referred to non-ROT and Use Tax statutory provisions for guidance on when 'title' to property transfers and whether a sale takes place for ROT and Use Tax purposes. With this in mind, a review of the Illinois Vehicle Code plainly reveals that the Illinois General Assembly, like the U.S. Congress, has passed legislation expressly instructing that TRAC provisions in a lease agreement will 'not create a sale' under Illinois law. 625 ILCS 5/3-201.1. This provision, just like its counterpart in federal law, provides strong guidance for ROT and Use Tax purposes that a sale under Illinois law does not occur, nor is 'title' to a motor vehicle transferred, when a TRAC provision is added to a lease agreement.

In essence, by applying Illinois law as set forth in 625 ILCS 5/3-201.1, the Department would be simply following Illinois law and the well-established and extensive interrelationship between the Illinois Vehicle Code and the ROT and Use Tax. It would also avoid chaos in the motor vehicle leasing industry, which routinely uses TRAC provisions, relying upon the above-stated federal and Illinois law.

Administrative Considerations

On the other hand, to ignore the Illinois Vehicle Code, and thus the General Assembly's declaration on when a sale of a motor vehicle takes place, the ROT and Use Tax would create an administrative nightmare. This would result in a sale occurring at two different times--one under the Vehicle Code and one under the ROT and Use Tax. Consequently, there would be considerable conflict over whom is the buyer, whether ROT and Use Tax is due on the 'title' transfer, whether credit for ROT paid prior to the 'title' transfer would be allowed, and ultimately how these conflicts would all be handled administratively.¹

Treating such leases as sales would also be logistically difficult to manage. Because the ultimate sales price would not be known until the vehicle is actually sold, any ST-556 filed at the inception of the lease would only be an estimate. The reason for this is that the final sales price and ultimate buyer is unknown at the beginning of the lease and, unlike the sale of other tangible property, the tax on vehicle sales must be paid up front, rather than as payments are received. Moreover, declaring these leases as sales would result in substantial administrative costs to the state and the taxpayers, yet provide no additional revenue to the state, since both the Use Tax and ROT are payable virtually at the same time and initially (though one would be an estimate) on the same tax base.

Equally significant, if the Department treats TRAC provision leases as sales, there would be virtually no way to adequately enforce this position. Because Illinois law, under the Vehicle Code, does not treat such leases as sales, no title is transferred and so no payment of the ROT and Use Tax would be required to effectuate the lease. Thereafter, since only the ultimate sale would be deemed a sale for Vehicle Code purposes, only the small amount of tax due on the actual title transfer of the vehicle would be collected upon filing of the 'title' application. Notably, under such a scenario, since the Department would treat the initial purchase of the vehicle by the leasing company as an exempt sale for resale, no Use Tax would be due on that initial 'title' transfer. This could

set up an administrative loophole situation where Illinois could lose millions of dollars of tax revenue.

Streamline Sales Tax

Under the proposed Streamline Sales Tax system, leases with TRAC provisions are treated as actual leases and not sales. This is consistent with their federal treatment and their treatment in the overwhelming majority of states. Because Illinois is planning to be part of this Streamline system and thus to be consistent with the Streamline system, as well as federal law and Illinois law, the Department must likewise treat such leases as actual leases and not sales.

FASB #13

Finally, even under Generally Accepted Accounting Principles, adding a TRAC provision to a lease agreement will not convert it into a sale for accounting purposes. ¶¶6 and 7 of FASB #13. Therefore, under FASB #13 the existence of a TRAC provision will not convert a lease into a sale; rather, other indicia that a sale has occurred must be present. *Id.*

Conclusion

In conclusion, federal law, Illinois law, Illinois administrative considerations, the Streamline Sales Tax System and even Generally Accepted Accounting Principles, all instruct that lease agreements with TRAC provisions are to be treated as leases and not sales. Because the ROT and Use Tax do not expressly state otherwise and since Illinois court decisions and the ROT and Use Tax themselves make it clear that these taxes are not to be applied in a vacuum, it would be logical, prudent and necessary for the Department to interpret these taxes in a manner consistent with Illinois and federal law.

If you have any questions, please call.

DEPARTMENT'S RESPONSE:

For purposes of this Private Letter Ruling, we are assuming that TRUST is recognized as a valid legal entity under Illinois law. The Department considers a valid trust to be subject to the Retailers' Occupation Tax Act and the Use Tax Act if it is in the business of leasing tangible personal property in Illinois.

We believe that the copy of the agreement entitled the "AAA VEHICLE LEASE AGREEMENT TRAC LEASE (C) (U.S.A)" is a lease (not a conditional sale) for Illinois Retailers' Occupation Tax and Use Tax purposes. This determination is made in conformance with provisions of Section 3-201.1 of the Illinois Vehicle Code that states:

"Terminal rent adjustment clause leases. In the case of motor vehicles or trailers, a transaction does not create a sale or a security interest merely because it provides that the rental price is permitted or required to be adjusted under the agreement either upward or downward by reference to the amount realized upon sale or other disposition of the motor vehicle or trailer."⁵

Please be advised that we cannot provide you with a binding response with respect to the Retailers' Occupation Tax liability of any Illinois dealers or lessees referenced in your ruling request because those dealers and lessees are not parties to this letter ruling.

We believe that the leases are not subject to liability under the Automobile Renting Occupation and Use Tax Act because the minimum lease term is for a period greater than one year (greater than 365 days). See 86 Ill. Adm. Code 180.101. Our review of the documentation enclosed with your request indicates that any continued lease beyond the minimum lease term of 367 days does not constitute a new lease or rental, but is merely a continuation of the original lease. The lessee and lessor are bound by the terms of the lease for the minimum lease term and any period in excess of the minimum lease term until such time as the lessee provides notice of the termination of the lease with 30 days prior written notice to the lessor. Because the minimum lease term exceeds 365 days and any continued lease beyond that minimum term is a continuation of that lease, the gross receipts from that lease for the minimum lease term and periods beyond that minimum term are not subject to Automobile Renting Occupation and Use Tax liability.

TRUST, as lessor under a true lease, will incur a Use Tax liability on the vehicles that are being leased in Illinois.⁶ TRUST is required to satisfy its Use Tax liability by paying the tax to an Illinois dealer at the time of purchase of a vehicle for lease in Illinois. TRUST or AAA may contractually arrange with the Illinois dealers to file the dealers' transaction reporting returns (ST-556s) and forward the dealers' Retailers' Occupation Tax payments to the Department relating to those returns as described in your letter ruling request. Please note that the Illinois dealers will remain liable for any tax not properly reported and paid to the Department regardless of their contractual arrangement with TRUST or AAA.

In standard retail transactions in Illinois, the retailers are required to collect the proper amount of Use Tax from their customers. The retailers then are allowed to retain those amounts as long as they properly pay Retailers' Occupation Tax on those sales. We understand that the contractual arrangement between the Illinois dealers and TRUST, or AAA as agent for TRUST, merely condenses these two transactions by having TRUST make the Illinois dealers' Retailers' Occupation Tax payments directly to the Department of Revenue on behalf of those Illinois dealers. As long as the books and records of both the Illinois dealers and TRUST establish that Retailers' Occupation Tax was properly paid on behalf of the Illinois dealers for each sale of a leased vehicle, the Department will consider TRUST to have properly satisfied its Use Tax liability on the purchase of those leased vehicles.

If TRUST purchases a vehicle from an out-of-State dealer that is not registered to collect Illinois Use Tax, TRUST satisfies its Use Tax liability on those purchases by properly completing Form RUT-25 and remitting the proper amount of Use Tax directly to the Department.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have questions regarding this Private Letter Ruling you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.

¹ There is no nominal buyout option or provision in the lease.

² The maximum Lease Term that corresponds to the amortization schedule set in the respective vehicle order amounts to a maximum of approximately 66 months.

³ Since the initial GIL request was prepared, slight modifications to the Lease agreement have taken place, including minor modification to the Lease Term wording.

⁴ The maximum period under the open ended lease is not a new lease agreement, but merely the agreed-to term under the original lease agreement. See May 3, 2002 DOR GIL.

¹ Even if it was administratively possible, it probably would require new regulations and tax forms to be issued by the Department, explaining the new complex tax payment and credit system.

⁵ 625 ILCS 5/3-201.1 (2000 State Bar Edition). We have noted that this section of the Illinois Vehicle Code is similar to Internal Revenue Code (IRC) Section 7701(h). Unlike the provisions of Section 7701(h) of the IRC, however, the Illinois provisions are not limited to those leases of motor vehicles that qualify as “qualified motor vehicle operating leases” under subsection (h) of Section 7701.

⁶ TRUST will not incur Retailers' Occupation Tax liability on the lease payments and has no Use Tax collection obligation with respect to the lease payments.